

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

JACK JOINER

Plaintiff

v.

Civil Action No. 2:94CV73-D-A

GARY SMITH and the  
CITY OF MARKS, MISSISSIPPI

Defendants

MEMORANDUM OPINION

The court now comes to consider defendants' motion for summary judgment. This cause of action originated from an arrest of Jack Joiner by Gary Smith, a police officer in Marks, Mississippi, which resulted in Joiner's conviction for obstructing traffic and disorderly conduct in the Municipal Court of the City of Marks, Mississippi. Plaintiff brings this § 1983 claim alleging that defendant Smith and the City of Marks, Mississippi ("the City") violated his Fourth and Fifth Amendment rights. Plaintiff also raises state law claims of defamation, assault and unreasonable use of force. Defendants have advanced several arguments in support of their motion for summary judgment. Plaintiff has responded at length. Upon a thorough review of the record in this cause, the court is of the opinion that the complaint only states claims against Smith in his official capacity and that the plaintiff has failed to establish a municipal policy. Accordingly, the defendants' motion for summary judgment as to plaintiff's § 1983 claims will be granted. In its discretion, the court declines to

exercise jurisdiction over the plaintiff's remaining state law claims.

#### **FACTUAL BACKGROUND**

On January 29, 1994, plaintiff Jack Joiner was arrested by defendant Gary Smith, a police officer with the City of Marks, Mississippi, at the time, and charged with obstructing traffic and disorderly conduct. Prior to the arrest, plaintiff had pulled his vehicle off the road and had been talking with a friend who was parked in front of him.<sup>1</sup> There is some disagreement as to the actual location of the vehicles in relation to the road; however, this disagreement is not controlling to the issues before this court on the present motion. At or about 10:00 p.m., Officer Smith, while on duty, came upon the parked vehicles of plaintiff and his friend. Smith pulled in behind Joiner to inquire as to why he and his friend were parked along the roadside. From this point forward, the events leading to Joiner's arrest are in dispute.

#### **A.**

Joiner contends that his vehicle was completely off the road and the intersection in which he and his friend were talking was not busy. He claims that Smith ordered him to exit his car and come to the back of the vehicle. Plaintiff was eating a candy bar at the time. For reasons which Joiner did not understand, Smith directed him to put the candy bar down and stop eating it.

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<sup>1</sup> Plaintiff testified in his deposition that Louis Jamison, Daron Smith and Raymond Carter were travelling with him that night.

Plaintiff questioned the necessity of the order and what eating the candy bar had to do with getting a citation. However, he claims that, although he questioned the officer, he complied with the order by putting the candy bar down to his side. Joiner continued to chew a portion of the candy bar already in his mouth. He says that the officer then slapped the candy bar out of his hands and violently began to place handcuffs on him. He argues that the handcuffs were intentionally placed on him too tightly for the purpose of inflicting pain, as opposed to simply placing him in custody. As a result of the tightness of the handcuffs, plaintiff suffered contusions and scrapes on his wrists which required medical treatment. Officer Smith then searched plaintiff's car and advised him that he was under arrest for "failure to comply". Joiner was then transported to the city jail, where he was charged with obstructing traffic and disorderly conduct.

B.

Officer Smith tells a different story. According to Officer Smith, while patrolling on the night of January 29, 1994, he stopped plaintiff for obstructing traffic. During the stop, he claims he asked Joiner to put down his candy bar so he could determine whether or not Joiner had been drinking. Officer Smith claims Joiner refused and he was placed under arrest for refusing a lawful order of a police officer. He further says that the

handcuffs were applied for the purpose of detaining plaintiff and were not applied in an attempt to cause him harm.

C.

In any event, Joiner was subsequently tried in the Municipal Court of Marks, Mississippi, and convicted of obstructing traffic and disorderly conduct. He never appealed the conviction. Plaintiff offers several reasons for this failure. He claims to have approached the clerk of the court about appealing the case. According to plaintiff, the clerk told him he would have to pay \$410.00 in cash and prepare an affidavit demonstrating why he wanted to appeal. Apparently, Joiner claims this information to be in error and an indication of an intention on the part of the City to hinder his appeal. He also claims to have asked an attorney to appeal the case, but that the attorney failed to timely do so. As of this date, Joiner stands convicted of obstructing traffic and disorderly conduct.

Joiner also claims that following his conviction in municipal court, he visited with the Mayor and City Attorney and was advised that, if he did not take any legal action, his conviction would be removed from his record. Apparently sometime later, Joiner alleges that Officer Smith spoke with his supervisors at the Mississippi Department of Corrections and told them that plaintiff was an "asshole" and "hung with the wrong crowd" and "hung with drug dealers". Additionally, plaintiff asserts that Officer Smith

allegedly told his supervisors to keep a close watch on him. Joiner testified in his deposition that he never received any cut in pay, reprimand, or adverse action as a result of Smith's statements. Joiner Depo. at 68-70.

Joiner filed this § 1983 lawsuit against Officer Smith and the City of Marks, Mississippi. He did not indicate in the caption of the complaint whether Smith was being sued individually or officially. Joiner claims that the officer subjected him to an arrest for an alleged trivial offense and used excessive force in effecting the arrest in violation of his Fourth Amendment right against unreasonable searches and seizures. Joiner also claims that he was denied a liberty interest without due process in violation of the Fifth Amendment by virtue of the defaming statements allegedly made by Officer Smith to his supervisors. The complaint includes state law claims of defamation and assault. After some discovery, defendants moved for summary judgment, arguing that plaintiff's complaint only included claims against Officer Smith in his official capacity, which is essentially a suit against the City. The defendants argue that since plaintiff can establish no municipal policy, his claims must fail. Alternatively, the defendants submit that should the court find that the complaint states claims against Smith, individually, summary judgment is still appropriate. In support of their alternative arguments, the defendants aver that plaintiff's claim

for unlawful arrest cannot be maintained because he was convicted of the charges and has not appealed the conviction. Defendants next argue that Joiner's excessive force claim and denial of liberty claim are simply not supported by the evidence. Lastly, defendants claim that because plaintiff failed to file a written notice of the state law claims as required by Mississippi law, those claims must also be dismissed.

#### Summary Judgment Standard

The summary judgment standard is a familiar one. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S.Ct. at 2554. "Where the record, taken as a

whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

## **DISCUSSION**

### **I.**

#### **Designating a Defendant's Capacity**

The court must first determine whether the complaint effectively states a claim against Officer Smith in his individual capacity. As noted by defendants, plaintiff failed to specify such in his original complaint. The United States Supreme Court in Hafer v. Melo, 502 U.S. \_\_\_, 112 S.Ct. \_\_\_, 116 L.Ed.2d 301, 308-09 n. \* (1992), recognized a split in the circuits on the requirement to plead individual suits with specificity (i.e. necessity to indicate capacity of defendants in the caption of the case). The Sixth and Eighth Circuits have held that absent specification, a suit against a public official is presumed to be against him in his official capacity only. See Wells v. Brown, 891 F.2d 591, 592 (6th Cir. 1989)(plaintiff must specifically plead that suit for damages is brought against public official in individual capacity); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1988)(same). These

circuits hold that the complaint's caption must be explicit as to defendant's capacity or face dismissal. However, as pointed out in Hafer, other circuits impose less rigid requirements and suggest that courts should consider the "course of proceedings", as opposed to looking strictly at the pleadings. See Hafer v. Melo, 912 F.2d 628, 635-36 (3rd Cir. 1990)(court looked to proceedings in district court to determine whether claims were official or individual capacity suits); Conner v. Reinhard, 847 F.2d 384, 394, n. 8 (7th Cir.), cert den. 488 U.S. 856, 102 L.Ed.2d 118, 109 S.Ct. 147 (1988)(same); Houston v. Reich, 932 F.2d 883, 885 (10th Cir. 1991)(same); Lundgren v. McDaniel, 814 F.2d 600, 603-04 (11th Cir. 1987)(same). Clearly, under the more stringent standard, plaintiff will be limited only to claims against Officer Smith in his official capacity. When applying the less stringent standard of looking at the "course of proceedings", the decision becomes more difficult. However, the court is of the opinion that under either standard here, plaintiff's complaint alleges only claims against Officer Smith in his official capacity.

The undersigned addressed the identical issue in Fairman v. City of Mound Bayou, Mississippi, et al., Civil Action No. DC 91-40-D-0 at pp. 13-18 (September 28, 1992). In Fairman, this court found that "the Supreme Court has held that where a complaint" fails to specify whether the defendant is being sued individually or officially, "the 'course of proceedings'...generally will



indicate the [nature] of liability sought to be imposed." Id. at 13 (quoting Kentucky v. Graham, 473 U.S. 159, 167 n. 14, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985)). Plaintiff argues that because Smith was named in the case separately from the City of Marks, Mississippi, defendant should have recognized his intent to sue Smith individually. He also claims that his prayer for punitive damages, as well as his defamation claim, indicates his intention to sue Smith individually.<sup>2</sup> Although plaintiff's argument has plausibility, the court finds that other evidence in the record weighs in favor of finding that claims against Smith are only in his official capacity. Significantly, the defendants' pleadings filed July 7, 1994, stated clearly their understanding that Smith was sued in his official capacity only. Plaintiff did nothing to rectify the defendants' understanding until the final pretrial conference held on March 23, 1995. At that time, only a month prior to trial, plaintiff made a motion to file an amended complaint. Recognizing the lateness of the request, with particular emphasis on the November 21, 1994, scheduling order deadline for filing amended pleadings and the upcoming April 24, 1995, trial date, Magistrate Judge S. Allan Alexander denied the motion to amend on April 10, 1995.

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<sup>2</sup> Punitive damages are not recoverable from a governmental entity, nor can the City of Marks be liable for the defamation claim.

In the case sub judice, plaintiff failed to specify in his complaint whether he intended to sue Officer Smith in his individual capacity. Plaintiff specifically charges in paragraph IV of his complaint that Smith was "acting in the course and scope of his employment as a Marks, Mississippi, police officer", an indication that Smith was being sued as an official. In answering the complaint back on July 7, 1994, defendants plead their understanding that Smith was sued in his official capacity only, yet plaintiff made no attempt to clarify until one month prior to trial. Based on this court's review of the proceedings, the court finds that plaintiff's only claims against Gary Smith are against him in his official capacity. Suing a defendant in his official capacity is just another way of suing the City. A suit against a city official in his official capacity therefore should be treated as a suit against the City. Graham, 473 U.S. at 166. The court will now proceed to address the motion for summary judgment accordingly.

## **II.**

### **Suit Against the City of Marks**

To impose liability on either the City or the official capacity defendant, plaintiff must prove that the City itself caused the constitutional violations at issue. Richardson v. Oldham, 12 F.3d 1373, 1381 (5th Cir. 1994). This is accomplished

by showing either that a city official with policymaking authority engaged in unconstitutional conduct or that there was an officially promulgated policy or custom or practice encouraging or sanctioning unlawful arrests or detentions. See Campell v. City of San Antonio, 43 F.3d 973 (5th Cir. 1995); Richardson, 12 F.3d at 1381-82; Fields v. City of South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991); Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir. 1984).<sup>3</sup>

In this case, Officer Smith is certainly not an official with final policymaking authority. See Fairman, *supra*, at 9 (this court held that police officer for City of Mound Bayou was not

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<sup>3</sup> In Bennett v. City of Slidell, 735 F.2d 861, 862 (5th Cir. 1984)(en banc), cert. denied, 472 U.S. 1016, 105 S.Ct. 3476, 87 L.Ed.2d 612 (1985), the Fifth Circuit defined "official policy" as:

1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or
2. A persistent, widespread practice of city officials or employees, which although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.

The "official policy" requirement was intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible. Pembaur v. Cincinnati, 475 U.S. 469, 479, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

official with policymaking authority); Webster, 735 F.2d at 842 (reversible error to allow jury to speculate whether police officers could be policymakers).<sup>4</sup> Plaintiff likewise can identify no official policy, custom, or practice which would bind the City for Officer Smith's actions. After conducting a thorough review of the record, the court concludes that nothing in the record even remotely suggests that the City followed any sort of policy or custom of utilizing excessive force when carrying out an arrest. Joiner describes only this single incident in which Smith used excessive force in arresting individuals. "Isolated violations are not the persistent, often repeated constant violations that constitute custom and policy" as required for municipal liability for actions of non-policymaking officers. Campbell, 43 F.3d at 977 (citations omitted). There is no evidence of any longstanding pattern of repeated constitutional violations by Officer Smith. Absent proof of a pattern of constitutional violations, there is no basis for imposing liability on the City of Marks for failing to prevent them. See Richardson, 12 F.3d at 1382. Joiner has failed to produce sufficient evidence of any municipal custom or policy to

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<sup>4</sup> The court would also note that, to the extent plaintiff claims that the municipal judge who convicted him of the charges may give rise to municipal liability, the Fifth Circuit has repeatedly held that a municipal judge acting in his or her judicial capacity to enforce state law does not act as a municipal official or lawmaker. Johnson v. Moore, 958 F.2d 92, 94 (5th Cir. 1992).

survive summary judgment for the City. Accordingly, plaintiff's § 1983 claims against the City will be dismissed.

Although the court finds that the claims here are against Officer Smith in his official capacity, the court is compelled to briefly address the claims as if they were brought against Smith individually. The United States Supreme Court has most recently held that any § 1983 claim, which attacks the unconstitutionality of a conviction (or imprisonment, as the case may be), does not accrue until that conviction has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, \_\_ U.S. \_\_, 114 S.Ct. 2364, 129 L.Ed.2d 383, 394 (1994). First, Joiner claims that he was unlawfully arrested in violation of the Fourth Amendment. The civil judgment on this claim sought by plaintiff necessarily implies the invalidity of his conviction--which as of this date has not been reversed or lawfully set aside. Heck dictates that his claim for unlawful arrest is not cognizable under § 1983 as long as his conviction remains undisturbed. See Wells v. Bonner, 45 F.3d 90, 95 (5th Cir. 1995)(court held that Heck prevented plaintiff's § 1983 claim for false arrest until conviction was invalidated).

As for plaintiff's Fourth Amendment excessive force claim, Heck would not warrant a dismissal. The standard for governing

excessive force is found in Knight v. Caldwell, 970 F.2d 1430, 1432 (5th Cir. 1992). Plaintiff may prevail on his claim for excessive force only by proving each of the following three elements: (1) an injury,<sup>5</sup> which, (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was (3) objectively reasonable. Knight, 970 F.2d at 1432

n. 1. As commented on in Knight, plaintiff must come forward with:

proof of injury, albeit significant or insignificant. In fact, the Supreme Court specifically denied constitutional protection for "de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind." Hudson, 503 U.S. \_\_\_, 112 S.Ct. at 1000, 117 L.Ed.2d at 167-168 (citations omitted).

Knight at 1432. With the minimal injuries complained of here, coupled with the conviction of disorderly conduct which weighs in favor of the reasonableness of the force used by Officer Smith, plaintiff has failed to create a genuine issue of material fact on his claim of excessive force.

Plaintiff also charges that defendants violated his liberty interest under the due process clause of the Fifth Amendment because of Officer Smith's allegedly defaming comments to Joiner's supervisors at the Mississippi Department of Corrections.

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<sup>5</sup> Until recently, the law in the Fifth Circuit required a person to prove that he or she incurred significant injury in order to prevail on a § 1983 excessive force claim. See Johnson v. Morel, 876 F.2d 477 (5th Cir. 1989). However, in Hudson v. McMillan, 503 U.S. \_\_\_, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), the Supreme Court overturned the significant injury requirement.

Plaintiff did not address this issue in response to this motion. As previously noted, Joiner never received a cut in pay, reprimand, or any adverse action as a result of the statements. There is no evidence in the record of any stigmatization. Accordingly, plaintiff's claim for loss of liberty would also fail.

In summary, although the court finds that the claims against Officer Smith were only in his official capacity, assuming arguendo that the complaint states claims against Smith individually, the result would be the same.

### III.

#### State Law Claims

Since there are no viable federal claims underlying plaintiff's § 1983 action, the court declines to exercise supplemental jurisdiction over the pendent state claims. The general rule in this circuit is "to dismiss state claims when federal claims to which they are pendent are dismissed." Parker & Parsley Petroleum v. Dresser Industries, 972 F.2d 580, 585 (5th Cir. 1992). This court is aware of no reason why the general rule should not apply in this case. Therefore, to the extent the complaint raises state law claims, such claims will be dismissed without prejudice.

### CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is granted in its entirety. The complaint only states

claims against Officer Gary Smith in his official capacity, which is simply another way of suing the City of Marks. Plaintiff fails to demonstrate any evidence of a municipal policy; without evidence of a municipal policy, the City of Marks is not liable under § 1983. The court declines to exercise jurisdiction over the pendent state law claims.

An Order in accordance with this opinion shall issue this \_\_\_\_ day of April, 1995.

\_\_\_\_\_  
United States District Judge



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Civil Action No. 2:94CV73-D-A

GARY SMITH and the  
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Defendants

FINAL JUDGMENT

In accordance with a memorandum opinion entered this day, it is hereby **ORDERED** that:

1) defendants Gary Smith and the City of Marks, Mississippi's motion for summary judgment as to plaintiff's claims for relief under § 1983 be, and it is hereby, **GRANTED**; plaintiff's § 1983 claims are hereby **dismissed with prejudice**;

2) the court declines to exercise jurisdiction over the state law claims in the complaint and they are dismissed without prejudice.

In sustaining the motion for summary judgment, all deposition excerpts, exhibits, affidavits and memoranda briefs considered by the court are incorporated into and made a part of the record in this cause.

**SO ORDERED** this \_\_\_\_ day of April, 1995.

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United States District Judge